

<b>000697</b>		<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO			1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) <b>N/A</b> 58	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Engineering & Capital Projects			3. DATE: 12/02 December 12, 2007	
4. SUBJECT: <b>Genesee Avenue/Interstate 5 Overcrossing Cooperative Agreement Amendment with Caltrans</b>						
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Frank Gaines 14 533-37714607		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Brad Johnson 533-3770		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <b>X</b>		
<b>8. COMPLETE FOR ACCOUNTING PURPOSES</b>						
FUND				9. ADDITIONAL INFORMATION / ESTIMATED COST:		
DEPT.				There is no change to the costs associated with the preparation of the environmental document		
ORGANIZATION						
OBJECT ACCOUNT						
JOB ORDER						
C.I.P. NUMBER						
AMOUNT						
<b>10. ROUTING AND APPROVALS</b>						
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	12/20/07	8	DEPUTY CHIEF	1/22/08
2	EAS	<i>[Signature]</i>	12/21/07	9	COO	- Not required -
3	EOCP - EXEMPT	EXEMPT		10	CITY ATTORNEY	3/3/2008
4	COUNCIL LIAISON OFFICE	<i>[Signature]</i>	12/26/07	11	ORIG. DEPT	10/28/08
5	FAC FINANCING	<i>[Signature]</i>	1/9/08	DOCKET COORD: COUNCIL LIAISON 11/6/08		
6	CIP/FM	<i>[Signature]</i>	1/16/08	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION		
7	AUDITOR	<i>[Signature]</i>	1/18/08	REFER TO: COUNCIL DATE: 11/19/08		
11. PREPARATION OF: <input type="checkbox"/> RESOLUTION(S) <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)						
1. Authorizing the Mayor or his representative to execute an Amended Cooperative Agreement with Caltrans for the preparation of an environmental document for the Genesee Avenue /Interstate 5 Overcrossing (CIP 52-372.0)						
11A. STAFF RECOMMENDATIONS: Adopt the resolution						
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)						
COUNCIL DISTRICT(S): 1						
COMMUNITY AREA(S): University City						
ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines, Section 15060(c)(3).						
HOUSING IMPACT: None						
OTHER ISSUES: Subject to charter section 99 - 6 votes required						
ATTACHMENTS: Amended Cooperative Agreement						

## EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: December 12, 2007 REPORT NO:  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Engineering and Capital Projects  
SUBJECT: Genesee Avenue/Interstate 5 Overcrossing Cooperative Agreement  
Amendment With Caltrans  
COUNCIL DISTRICT: 1  
STAFF CONTACT: Frank Gaines, 533-4607

### REQUESTED ACTION:

Executing an amended Cooperative Agreement with Caltrans for the Genesee Avenue/Interstate 5 Overcrossing Project

### STAFF RECOMMENDATION:

Introducing an ordinance authorizing the Mayor or his designee to execute the revised Cooperative Agreement with Caltrans

### EXECUTIVE SUMMARY:

On February 9, 2004, Council authorized the City to enter into a Cooperative Agreement with Caltrans for improvements to the Genesee Avenue/Interstate 5 interchange. In that agreement, the City agreed to provide preliminary engineering and the preparation of an environmental document for the project.

It has subsequently been determined that because this project is on the interstate highway system, Caltrans is required to be the Lead Agency and for the City to be the Responsible Agency for the environmental document. An amended Cooperative Agreement to memorialize this change in responsibilities is required. Because the agreement will extend beyond the five-year limit, an Ordinance is required.

### FISCAL CONSIDERATIONS:

There is no change to the costs associated with the preparation of the environmental document.

PREVIOUS COUNCIL ACTIONS: The original Cooperative Agreement with Caltrans was approved by Council on February 9, 2004.

### COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Outreach was conducted as part of the Project Study Report in 2004. Monthly project design team meetings have been held including UCSD and Scripps Hospital, Caltrans and SANDAG representatives. Milestone updates have been provided with the North University City Planning Group.

000700

STAKEHOLDERS: University of California, San Diego; Scripps Hospital La Jolla



Patti Boekamp, Director  
Engineering and Capital Projects



David Jarrell  
Deputy Chief/ Public Works

000701

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO  
AUTHORIZING AN AMENDED COOPERATIVE AGREEMENT WITH  
CALTRANS FOR THE GENESEE AVENUE/INTERSTATE 5  
OVERCROSSING.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his representative is authorized to execute for and on behalf of said City, an Amended Cooperative Agreement with Caltrans for the preparation of an environmental document for the Genesee Avenue/Interstate 5 Overcrossing (CIP 52-372.0), under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. OO-\_\_\_\_\_, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

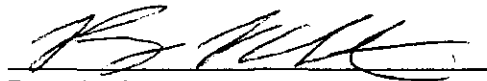
Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

BE IT FURTHER RESOLVED, that this activity is not a "project" and is therefore exempt from California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines, Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Ryan Kohut  
Deputy City Attorney

RK:cfq  
10/27/08  
Or.Dept:E&CP  
O-2009-64

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

11-SD-5  
PM 28.4/30.4  
EA 11-065000  
Agreement 11-0611/A1  
Genesee & Voigt

### **AMENDED COOPERATIVE AGREEMENT**

This AMENDED AGREEMENT, entered into effective on \_\_\_\_\_, 2007, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

City of San Diego, a body politic and a municipal corporation of the State of California, referred to herein as "CITY."

### **RECITALS**

1. STATE and CITY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within CITY's jurisdiction.
2. The parties hereto entered into Cooperative Agreement No. 11-0611 on February 9, 2004. Said Agreement, which is expiring on December 31, 2007, defined the terms and conditions to construct improvements to Interstate 5, including the replacement of Voigt Drive and Genesee Avenue over-crossings and the Genesee ramps; construction of ramp meters; and construction of auxiliary lanes between Sorrento Valley Road and La Jolla Village Drive, referred to herein as "PROJECT".
3. STATE and CITY acknowledged that it is now mutually beneficial and desirable for CITY to perform preliminary engineering, prepare environmental documentation, including the investigative studies and technical environmental reports, and Project Report (PR) for PROJECT, collectively referred to herein as "STUDY", in order to bring about the earliest possible construction of PROJECT.
4. Cooperative Agreement No. 11-0611 had established that the CITY would be the California Environmental Quality (CEQA) Lead Agency and the STATE would be the CEQA Responsible Agency. However, it has been determined that the STATE will now be the CEQA Lead Agency and the CITY will be the CEQA Responsible Agency, therefore, the need for this Amendment to update related articles.

5. CITY desires STATE to provide survey work consisting of preparing planning level topographic mapping, surveying and preparation of alignments of existing highway and city roads within limits of PROJECT area, and incorporating as -built mapping into topographic mapping.
6. CITY is willing to fund one hundred percent (100%) of all the capital outlay and support costs of STUDY, except that the costs of STATE's Independent Quality Assurance (IQA) of STUDY and STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review and approval if appropriate of the PROJECT environmental documentation prepared entirely by CITY, will be borne by STATE.
7. STATE funds will not be used to finance any of the PROJECT capital and support costs except as set forth in Recital 6 above.
8. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
9. PROJECT Plans, Specifications and Estimate (PS&E), Right of Way, landscape maintenance and construction phases will be the subject of a separate future agreement or agreements.
10. This Agreement will define the roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding the environmental documentation, studies, and reports necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with NEPA, if applicable.
11. STATE and CITY have agreed to enter into this Amended Agreement in order to define herein the revised terms and conditions under which STUDY will now be prepared and financed pursuant to this Amended Agreement. This Amended Agreement will replace Cooperative Agreement No. 11-0611 in its entirety.

## SECTION I

### CITY AGREES:

1. To fund one hundred percent (100%) of all the work on STUDY except for costs of STATE's IQA, STATE's review, comment, and approval if appropriate, of the PROJECT environmental documentation for CEQA, and NEPA if applicable.
2. To not use STATE funds for any PROJECT capital and support costs except as set forth in this Agreement.

3. All STUDY work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such STUDY work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.
4. All STUDY, except as set forth in this Agreement, is to be performed by CITY. Should CITY request that STATE perform any portion of STUDY work, except as otherwise set forth in this Agreement, CITY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
5. To have a STUDY prepared, at no cost to STATE, and to submit STUDY to STATE for STATE's review and concurrence at appropriate stages of development. The PR for PROJECT shall be signed on behalf of CITY by a Civil Engineer registered in the State of California.
6. To permit STATE to monitor, participate, and oversee the selection of personnel who will prepare the STUDY. CITY agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
7. Personnel who prepare the environmental documentation, including the investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems which may arise during PS&E, right of way acquisition, construction, and/or to make design revisions for contract change orders.
8. To identify and locate all utility facilities within PROJECT area as part of CITY's responsibility towards STUDY.
9. To make written application to STATE for necessary encroachment permits authorizing entry of CITY onto the SHS right of way to perform surveying and other investigative activities required for preparation of STUDY.
10. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside of the existing SHS right of way that could impact PROJECT as part of performing any work pursuant to this Agreement. If CITY discovers hazardous material or contamination within the PROJECT study area during said investigation, CITY shall immediately notify STATE.
11. CITY has been invoiced by STATE and CITY has deposited \$10,000 on November 15, 2004 as required by Cooperative Agreement No. 11-0611. Said amount represents STATE's cost to perform survey work pursuant to Article 5 of the Recitals of this Amended Agreement. CITY's total obligation for survey work under this Amended Agreement shall not exceed the amount of \$30,000, provided that the CITY may, at its sole discretion, in writing, authorize a greater amount.



12. City Point of Contact: Brad Johnson  
City of San Diego  
1010 Second Ave, Ste 800  
San Diego, CA 92101-4904  
Tel: (619) 533-3005  
email: bjohnson@sandiego.gov

## **SECTION II**

### **STATE AGREES:**

1. At no cost to CITY, to complete STATE's review as CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documents prepared and submitted by CITY and to provide IQA of all CITY work necessary for completion of STUDY for PROJECT done by CITY, including, but not limited to, investigation of potential hazardous material sites undertaken by CITY or its designee, and provide prompt reviews and concurrence, as appropriate, of submittals by CITY, while cooperating in timely processing of documents necessary for completion of the STUDY.
2. Upon proper application by CITY and by CITY's contractor, to issue, at no cost to CITY and CITY's contractor, the necessary encroachment permits for required work within the SHS right of way as more specifically defined elsewhere in this Agreement.
3. To perform reimbursed survey work on behalf of CITY for STUDY, not to exceed \$30,000, consisting of preparing planning level topographic mapping, surveying and preparation of alignments of existing highway and city roads within limits of PROJECT area, and incorporating as-built mapping into topographic mapping. Surveying will be performed in accordance with current State standards, procedures, and policies. STATE shall stop survey work for STUDY should continuing work exceed CITY's deposit.
4. Upon completion of STUDY by CITY and completion of a final audit of STATE's cost to perform Survey work on behalf of CITY, to return any amount of CITY's deposit made pursuant to Section I, Article 11, of this Agreement.
5. State Point of Contact: Arturo Jacobo, Project Manager  
4050 Taylor Street  
San Diego, CA 92110  
Tel: (619) 688-6816  
email: Arturo\_jacobo@dot.ca.gov

### **SECTION III**

#### **IT IS MUTUALLY AGREED:**

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of STUDY administered by CITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the STUDY by CITY conform with then existing STATE standards. IQA does not include any STUDY related work deemed necessary to actually develop and deliver the STUDY, nor does it involve any validation to verify and recheck any work performed by CITY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by CITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and CITY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this Agreement.
3. The Project Study Report (PSR) for PROJECT, approved on December 1, 2004, is by this reference, made an express part of this Agreement.
4. That the preparation of environmental documentation, including the related investigative studies and technical environmental reports, for STUDY shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance.
5. STATE will be the CEQA Lead Agency and CITY will be a CEQA Responsible Agency. STATE will be the Federal Lead Agency for NEPA, if applicable. CITY will assess PROJECT impacts on the environment and CITY will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and NEPA, if applicable. CITY will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including the administrative draft, draft, administrative final, and final environmental documentation, as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering, preparation of PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to

comply with CEQA and/or NEPA if applicable, this Agreement will be amended to include completion of these additional tasks by CITY.

6. CITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be paid by CITY, as a PROJECT cost.
7. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s) and/or environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
8. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
9. CITY, subject to STATE's prior review and approval, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process and if applicable, the NEPA environmental process, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.
10. STATE, as a PROJECT cost, shall be responsible for overseeing the planning, scheduling and holding of all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. CITY, to the satisfaction of STATE and subject to all of STATE's and FHWA's policies and procedures, shall be responsible for performing the planning, scheduling and details of holding all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. STATE will participate as CEQA Lead Agency and if applicable, the NEPA Lead Agency, in all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process, for PROJECT. CITY shall provide STATE the opportunity to provide comments on any public meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such public meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings.
11. In the event CITY would like to hold separate and/or additional public meetings regarding the PROJECT, CITY must clarify in any meeting notices, exhibits, handouts or other material that STATE is the CEQA Lead Agency and the NEPA Lead Agency, if applicable, and CITY is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings are not

part of the CEQA public review process. CITY shall provide STATE the opportunity to provide comments on any meeting exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE will maintain final editorial control of exhibits, handouts or other materials to be used at the public meeting/hearing solely with respect to text or graphics that could lead to public confusion over CEQA and/or NEPA related roles and responsibilities.

12. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
13. CITY's share of all changes in development and construction costs associated with modifications to the basic design features as described above shall be in the same proportion as described in this Agreement, unless mutually agreed to the contrary by STATE and CITY in a subsequent amendment to this Agreement.
14. Any hazardous material or contamination of an HM-1 category found within existing SHS right of way during PROJECT shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within local road right of way during PROJECT shall be the responsibility of CITY. For the purpose of this Agreement, hazardous material of HM-1 category is defined as that level or type of contamination which must be remediate by reason of its mere discovery regardless of whether it is disturbed by PROJECT or not. STATE shall sign the HM-1 manifest and pay all costs for remedy or remedial action within existing SHS right of way, except that if STATE determines, in its sole judgment, that STATE's cost for remedy or remedial action is increased as a result of CITY's decision to proceed with PROJECT, that additional cost identified by STATE shall be borne by CITY. CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within local road right of way or other property. While STATE will exert every reasonable effort to fund the remedy or remedial action for which STATE is responsible, in the event STATE is unable to provide funding, CITY will have the option to either delay PROJECT until STATE is able to provide that corrective funding or CITY may proceed with the remedy or remedial action as a PROJECT expense without any subsequent reimbursement by STATE.
15. Any remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within existing SHS right of way shall be the responsibility of CITY, who shall sign the HM-2 manifest and management of HM-2 will be a PROJECT cost if the PROJECT proceeds. Any remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within CITY right of way shall be the responsibility of CITY who shall sign the HM-2 manifest and

management of HM-2 will be at CITY's cost, if the PROJECT proceeds. For the purposes of this Agreement any hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed had PROJECT not proceeded.

16. If hazardous material or contamination of either HM-1 or HM-2 category is found on new right of way acquired by or on account of CITY for PROJECT, CITY shall be responsible, at CITY's expense, for all required remedy or remedial action and/or protection in the absence of a generator or prior property owner willing and prepared to perform that corrective work.
17. Remedial actions proposed by CITY on SHS right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices and standards and practices mandated by those Federal and State regulatory agencies.
18. A separate Cooperative Agreement or agreements will be required to address Landscape Maintenance, and to cover responsibilities and funding for the design and construction phases of PROJECT.
19. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
20. Neither STATE nor any officer or employee thereof is responsible for any injury, damage Or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

21. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
22. Prior to the commencement of any work pursuant to this Agreement, either STATE or CITY may terminate this Agreement by written notice to the other party.
23. That this Amended Agreement will replace Cooperative Agreement No. 11-0611 in its entirety.
24. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

- 25: This Agreement shall terminate upon the satisfactory completion of all post-PROJECT construction obligations of CITY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2009, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**CITY OF SAN DIEGO**

**Will Kempton  
Director**

\_\_\_\_\_  
Deputy District Director

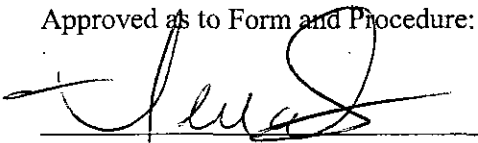
Certified as to Funds:

By: \_\_\_\_\_  
Mayor or Designee

\_\_\_\_\_  
District Budget Manager/BK

By: \_\_\_\_\_

Approved as to Form and Procedure:

  
\_\_\_\_\_  
Attorney  
Department of Transportation

Certified as to Financial Terms and Conditions:

Approved as to form:

\_\_\_\_\_  
City Attorney

  
for Accounting Administrator

ORIGINAL

11-SD-5  
PM R28.43/R30.43  
EA.11- 065000  
Agreement No. 11- 0611  
Genesee O.C & Voigt  
Dr. O.C Replacement

### COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON FEB 09 2004, 2004, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and

CITY OF SAN DIEGO, a body politic and a municipal corporation of the State of California, referred to herein as "CITY".

### RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code section 114, are authorized to enter into a Cooperative Agreement for improvements to State highways within CITY's jurisdiction.
2. STATE and CITY mutually desire to construct improvements to Interstate 5, including the replacement of Voigt Drive and Genesee Avenue over-crossings and the Genesee ramps; construction of ramp meters; and construction of auxiliary lanes between Sorrento Valley Road and La Jolla Village Drive, referred to herein as "PROJECT".
3. STATE and CITY acknowledge that it is mutually beneficial and desirable for CITY to perform preliminary engineering and prepare the environmental document (ED) and Project Report (PR), both combined referred to herein as "STUDY", in order to bring about the earliest possible construction of PROJECT.
4. CITY desires STATE to provide survey work consisting of preparing planning level topographic mapping, surveying and preparation of alignments of existing highway and city roads within limits of PROJECT area, and incorporating as-built mapping into topographic mapping.

DOCUMENT NO. 00-298854-2

FILED FEB 09 2004  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

015792



5. STATE and CITY desire herein to specify the terms and conditions under which that STUDY will be prepared and financed.

## SECTION I

### CITY AGREES:

1. To carry out and prepare STUDY in accordance with all applicable State and Federal laws, rules, regulations, policies, procedures and manuals. That STUDY, including but not limited to the pre-draft, draft, pre-final and final of the ED, will be subject to ongoing review, comment and concurrence by STATE.
2. To have the final study documents and drawings of civil, structural, mechanical, electrical, architectural, or other engineering features of STUDY prepared by or under the direction of engineers or architects registered and licensed in the applicable professional field in the State of California. Any engineering reports, and each engineering map, drawing or plan shall bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the professional engineer responsible for their preparation. To have environmental technical studies prepared by staff meeting the minimum professional qualification identified by STATE.
3. To furnish STATE, prior to commencing work on STUDY, a proposed Schedule of Major Deliverables for STUDY, herein referred to as "SCHEDULE". CITY agrees to promptly notify and obtain STATE's Project Manager concurrence for any proposed changes that will be made to SCHEDULE. CITY also agrees that the SCHEDULE will be modified as necessary to ensure STATE's obligations for PROJECT are satisfied.
4. To fund one hundred percent (100%) all of the work on STUDY.
5. To deposit with STATE within thirty (30) days receipt of invoice, which will be issued upon execution of this Agreement and prior to the performance of any survey work by STATE, the amount of \$10,000. Said amount represents STATE's cost to perform survey work pursuant to Section II, Article 4, of this Agreement. CITY's total obligation for survey work costs under this Agreement shall not exceed the amount of \$30,000, provided that CITY may, at its sole discretion, in writing, authorize a greater amount.
6. To identify and locate all utility facilities within PROJECT area as part of CITY's responsibility towards STUDY.

7. To obtain, at CITY's expense, all necessary permits and/or agreements from appropriate regulatory agencies. All mitigation, monitoring, and/or remedial action required by said permits shall constitute parts of the cost of PROJECT.
8. To Permit STATE to monitor and participate in the selection of those CITY personnel and consultants who will perform STUDY. CITY agrees to consider any reasonable request by STATE to discontinue the services of any CITY personnel or consultant considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform in accordance with scope of work and/or other pertinent criteria.
9. To designate a Project Manager through which all communications between the STATE and CITY shall be channeled. The CITY Coordinator shall be:

Larry Van Wey  
City of San Diego  
1010 Second Ave. Suite 800  
San Diego, CA 92101-4904  
(619) 533-3005

## SECTION II

### STATE AGREES:

1. To assist CITY in ascertaining the scope of PROJECT alternatives to be studied.
2. To issue, at no cost to CITY, upon proper application by CITY, an encroachment permit to CITY authorizing entry onto STATE's right of way. If CITY uses consultants rather than its own staff to perform the work, those consultants will also be required to obtain an encroachment permit. The permits will be issued at no cost upon proper application by the consultants.
3. To perform, at no cost to CITY, quality assurance work on STUDY.
4. To perform reimbursed survey work on behalf of CITY for STUDY, not to exceed \$30,000, consisting of preparing planning level topographic mapping, surveying and preparation of alignments of existing highway and city roads within limits of PROJECT area, and incorporating as-built mapping into topographic mapping. Surveying will be performed in accordance with current State standards, procedures, and policies. STATE shall stop survey work for STUDY should continuing work exceed CITY's deposit.

5. To issue, upon execution of this Agreement, and invoice of \$10,000. Said amount represents STATE's cost to perform survey work pursuant to Section II, Article 4, of this Agreement. CITY's total obligation for survey work costs under this Agreement shall not exceed the amount of \$30,000, provided that CITY may, at its sole discretion, in writing, authorize a greater amount.
6. Upon completion of STUDY by CITY and completion of a final audit of STATE's cost to perform Survey work on behalf of CITY, to return any amount of CITY's deposit made pursuant to Section I, Article 5, of this Agreement.
7. To designate a Project Manager through which all communications between STATE and CITY shall be channeled. The STATE Project Manager shall be:

Arturo Jacobo  
Department of Transportation, District 11, MS 27  
P.O. Box 85406  
San Diego, Ca. 92186  
619-688-6816

### SECTION III

#### IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this agreement are subject to the appropriation of resources by the Legislature, State Budget Authority, and the allocation of resources by the California Transportation Commission.
2. CITY's Project Manager and STATE's Project Manager shall cooperate, review and concur on the work completed by CITY or CITY's consultant during the performance of STUDY.
3. CITY will furnish STATE with all necessary copies of STUDY, all other development studies, and environmental studies and related documents to complete the review and approval process. Upon completion of all work under this Agreement, ownership and title to all engineering and environmental reports, documents, plans, and estimates produced as part of STUDY will automatically be vested jointly between STATE and CITY.

4. CITY will be the Lead Agency for CEQA and STATE will be the liaison for the NEPA Lead Agency and a CEQA Responsible Agency. The Federal Highway Administration (FHWA) will be the Federal Lead Agency for NEPA. CITY will assess impacts of PROJECT on the environment and, if necessary, will prepare ED, and necessary technical studies/reports in order to meet the requirements of CEQA and NEPA. STATE's review, comment and concurrence on technical studies/reports is required. The draft and final ED will require STATE's review and comment, as well as FHWA's review and approval, prior to public circulation, if any. CITY will provide all data for, and prepare drafts of, the Draft Project Report (DPR) and the PR. STATE will review and process the reports and request approval of PROJECT and ED by the FHWA. CITY will be responsible for the public hearing process.
5. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
6. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development or design of State highways and public facilities different from the standard of care imposed by law.
7. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

8. This Agreement shall terminate upon final approval of the final environmental document or on December 30, 2007, whichever is earlier in time, unless all parties agree to an extension of time.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

JEFF MORALES  
Director of Transportation

By: Allan Kosup  
ALLAN KOSUP  
Deputy Director, Program/Project Mgmt.

**CITY OF SAN DIEGO**

By: [Signature]  
City Manager

By: [Signature]  
City Attorney

Certified as to funds:

By: Roma Arica  
District Budget Manager BK [Signature]

Approved as to form and procedure:

By: William P. Banta  
Attorney Department of Transportation

Certified as to procedure:

By: Maria Laramie  
for Accounting Administrator

R- 298854

RESOLUTION NUMBER R- 298854ADOPTED ON FEB 09 2004A RESOLUTION AUTHORIZING AN AGREEMENT WITH  
KIMLEY-HORN & ASSOCIATES FOR ENGINEERING  
SERVICES FOR THE GENESEE AVENUE WIDENING

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City, an agreement with Kimley-Horn & Associates for Engineering Services for the Genesee Avenue Widening[Agreement], under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR- 298854-1, together with any reasonably necessary modifications or amendments thereto which do not increase Agreement cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of the Agreement.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$3,194,899 from CIP No. 52-372.0, Genesee Avenue – Widen I-5 Overcrossing, Fund No. 79001, is authorized solely and exclusively for the purpose of providing funds for the Agreement and related in-house costs.

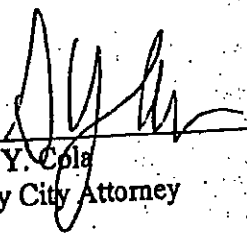
BE IT FURTHER RESOLVED, that the City Manager is authorized to execute, for and on behalf of the City, a Cooperative Agreement with the California Department of Transportation for the purposes of providing the preliminary design and environmental document for the Genesee Avenue – Widen I-5 Overcrossing project, CIP No. 52-372.0, under the terms

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and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR- 298854-2, together with any reasonably necessary modifications or amendments thereto which do not increase Agreement cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of the Agreement.

APPROVED: CASEY GWINN, City Attorney

By

  
Susan Y. Cola  
Deputy City Attorney

SYC:sc  
01/29/04  
Aud.Cert.:2400734  
Or.Dept: E&CP  
R-2004-840

000721

Passed and adopted by the Council of San Diego  
on February 9, 2004, by the following vote:

**YEAS: PETERS, ZUCCHET, ATKINS, LEWIS, MAIENSCHIN, FRYE,**  
**MADAFFER, INZUNZA, AND MAYOR MURPHY.**

**NAYS: NONE.**

**NOT PRESENT: NONE.**

AUTHENTICATED BY:

**DICK MURPHY**

Mayor of The City of San Diego, California

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(Seal)

By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and  
correct copy of RESOLUTION NO. R- 298854, passed and  
adopted by the Council of The City of San Diego, California on  
February 9, 2004.

**CHARLES G. ABDELNOUR**

City Clerk of The City of San Diego, California

(SEAL)

By:  \_\_\_\_\_, Deputy

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